

**Internal Revenue Service**

**Department of the Treasury**

District  
Director

1100 Commerce St., Dallas, Texas 75242

Date: FEB 19 1993

Person: [REDACTED]

Telephone: [REDACTED]

Refer reply to: [REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(5) of the Internal Revenue Code.

Based on the National Office Technical Advice Memorandum, a copy of which has previously been provided to you, you do not qualify for exemption under section 501(c)(5) of the Internal Revenue Code. You should file Federal income tax returns within 30 days.

If you have any questions, you may contact the person whose name is shown in the heading of this letter.

Sincerely,

[REDACTED]  
District Director

INTERNAL REVENUE SERVICE  
TECHNICAL ADVICE MEMORANDUM

District Director  
Dallas, Texas

Taxpayer Name:

[REDACTED]

Taxpayer's Address:

[REDACTED]

Taxpayer's Identification Number:

[REDACTED]

Date of Conference:

[REDACTED]

Issues:

(1) Whether arranging for members to sell their products at a farmers market better the conditions of those engaged in raising crops, improves the grade of their products, or develops a high grade of efficiency in their occupations as contemplated in section 501(c)(5) of the Code.

(2) Whether limiting this activity to members benefits the entire farming industry.

Facts:

The subject organization is a newly incorporated successor to the [REDACTED]. The Association was recognized as exempt under section 501(c)(5) of the Code.

The subject organization was established to assist farmers and ranchers in direct marketing of their products, creating public awareness of the market, create viable markets and maintain the integrity of the market design. Membership is available to any farmer, rancher or grower within [REDACTED] radius of the town in which the market is located. In order to accomplish its purposes the organization has leased sites in at least [REDACTED] cities in the [REDACTED] area. The members of the organization sell their products to the general public at these sites in individual stalls operated by the member. The sales

Re: [REDACTED]

activities are in the retail and not the wholesale market. In order to facilitate this activity the subject organization is involved in obtaining a site, erecting or owning stalls which are rented out to members who are selling at the facility, advertising, obtaining licensing and other activities typical of carrying on a sales market. The corporation has also negotiated a contract with the State of [REDACTED] to enable its members to participate in the WIC and food stamp programs. The organization is used as a conduit to coordinate remittances to its members from such programs. It pays an individual a \$[REDACTED] a year to coordinate these payments. The organization represents that it would be impossible for its members to participate in the WIC program on an individual basis. The organization also purchases retail sized baskets in bulk to sell to its members to be used in selling their products at the market. It also publishes a newsletter and inspects its members farms.

The submitted financial information establishes the largest amount of income received comes through the WIC program. Stall rental is the second largest source of income. The payments from the WIC program are merely forwarded to the members based upon the amount of WIC sales made by an individual member. The bulk of the expenses incurred involve the sales activities of the organization. Purchases for resale to members are minor as is the costs incurred in printing and mailing the newsletter. Inspection of members farms also appears to be a minor activity.

Law:

Section 501(c)(5) of the Code provides for the exemption from Federal income tax of labor, agricultural, or horticultural organizations.

Section 1.501(c)(5)-1 of the Income Tax Regulations provides that the organizations contemplated by section 501(c)(5) of the Code as entitled to exemption from income taxation are those which (1) have no net earnings inuring to the benefit of any members, and (2) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Rev. Rul. 66-105, 1966-1 C.B. 145 holds that an organization composed of agricultural producers whose principal activity is marketing livestock for its members does not qualify for exemption under section 501(c)(5) of the Code. The organization was considered to be acting as a sales agent for its members and therefore did not meet the requirements of section 1.501(c)(5)-1 of the regulations.

Re: [REDACTED]

Rev. Rul. 76-399, 1976-2 C.B. 152 holds that a nonprofit organization of growers and producers of a particular agricultural commodity formed principally to negotiate with processors for the price to be paid to members for their crops qualifies for exemption under section 501(c)(5) of the Code. The organization was distinguished from that described in Rev. Rul. 66-105 in that the sole activity of the organization described in Rev. Rul. 76-399 was to negotiate prices for its members. It was not responsible for actually entering into sales contracts nor obligated to perform any acts necessary to consummate the sale of crops.

Rev. Rul. 77-153, 1977-1 C.B. 147 holds that a nonprofit organization that owns and operates a livestock facility and leases it to the local members of a nonexempt national association of farmers for use in implementing the association's collective bargaining program with processors does not qualify for exemption as an agricultural organization. The organization was providing business services. As such it merely relieved the members of work they would either have to perform themselves or have performed for them.

Rationale:

An organization qualifies for recognition of exemption as an agricultural organization described in section 501(c)(5) if it is primarily engaged in agricultural or horticultural pursuits. The organization must have as its object the betterment of the conditions of those engaged in agricultural pursuits, the improvement of the grade of their products, or the development of a higher degree of efficiency in their occupations. This requires a two part analysis. First we must determine what the organizations primary activity is and then we must determine whether this activity accomplishes section 501(c)(5) purposes.

The largest amount of income the organization receives is through the WIC program. The submitted information establishes that the subject organization's involvement in the WIC program is to act as a conduit for its members in receiving payments from that program. Therefore the size of this activity cannot be measured by the amount of WIC payments. Accordingly, we must consider other evidence to determine the size of this aspect of the organizations overall program. The fact that the WIC coordinator is only paid \$[REDACTED] per year strongly indicates that the organization's involvement in the WIC program is very slight. Therefore we have concluded that the organization's involvement in this program is not its primary purpose.

Re: [REDACTED]

The newsletter and bulk purchases appear to be only minor activities. Similarly farm inspections appear to be a minor activity. On the other hand, the submitted information indicates that the greatest amount of expenditures incurred by the organization involve sales activities. In fact stall rental is greatest source of income the organization receives. Therefore, we must conclude that the organization's primary purpose is its involvement in sales activities.

Having determined that the organization's involvement in sales activities is its primary purpose we must consider precisely what its involvement is and whether this is an exempt section 501(c)(5) activity.

The subject organization's involvement in sales activities is limited. It does not negotiate prices for its members or set prices in its sales sites. It appears that the organization's involvement in this program is more in the nature of a landlord or sales facilitator. The organization provides a site, stalls, permits, advertising and other typical expenses incurred in operating a sales facility. In Rev. Rul. 77-153 an organization that owned and operated a livestock facility, which leased it to another agricultural organization was held not to be an exempt section 501(c)(5) organization. It was merely providing a business service to the other organization or the individual members of that organization. Similarly, in Rev. Rul. 66-105 an organization directly involved in sales activities on behalf of its members was denied exemption under section 501(c)(5). The organization described in Rev. Rul. 66-105 was compared and contrasted in Rev. Rul. 76-399 which granted exemption under section 501(c)(5) to an organization that negotiated prices with food processors on behalf of its members. The holding in Rev. Rul. 76-399 emphasized that distinction between the two organizations was that the organization described in Rev. Rul. 66-105 was merely a sales agent whereas that described in Rev. Rul. 76-399 was not involved in sales but merely helped its members in establishing a fair price for their products.

Accordingly, we have concluded that acting as an agent, a sales representative or a landlord is not an exempt section 501(c)(5) activity. Because this is the subject organizations primary purpose it does not qualify for exemption under section 501(c)(5) of the Code.

Having concluded that the organization is not engaging in proper section 501(c)(5) activities, it is not necessary to give consideration to whether a section 501(c)(5) agricultural organization can limit its activities to members.

Re: [REDACTED]

**Conclusion:**

(1) Arranging for members to sell their products at a farmers market does not better the conditions of those engaged in raising crops, improve the grade of their products, or develop a high grade of efficient in their agricultural pursuits. Rather it is merely personal service to the members of the organization and the organization does not qualify for exemption under section 501(c)(5) of the Code.

(2) Since we have concluded that the activity is not a qualifying section 501(c)(5) activity there is no need to give consideration to the issue of whether a section 501(c)(5) agricultural organization can limit its services to members.

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